

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lucinda Richard	Team: Team # 6	CCRB Case #: 200714755	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 10/09/2007 10:20 PM	Location of Incident: Mulberry Street and Grand Street	Precinct: 05	18 Mo. SOL 4/9/2009	EO SOL 4/9/2009	
Date/Time CV Reported Tue, 10/09/2007 10:48 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 10/09/2007 10:48 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM James Famiano	07548	936568	005 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Kenya Bolden	30825	939926	005 PCT
2. POM Brian Chin	00053	896283	005 PCT
3. SGT Brian Crimmins	02005	903710	005 PCT
4. POM James Wheeler	13000	929349	005 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM James Famiano	Discourtesy: Officer James Famiano spoke rudely to § 87(2)(b)	
B.POM James Famiano	Abuse: Officer James Famiano refused to provide his name and shield number to § 87(2)(b)	

## Synopsis

On October 9, 2007, at 10:20 p.m., § 87(2)(b) was stopped in her car at a stoplight on Mulberry Street at the intersection of Hester Street. The car in front of her, a silver four-door Sedan, did not move when the light changed to green. The light changed from red to green a second time and the car still did not move, so § 87(2)(b) honked her car horn. Officer James Famiano exited the rear passenger seat of the car, approached the driver's side of § 87(2)(b)'s car, pointed his finger in her face, and said, "You'd better calm the fuck down" (Allegation A). When he asked her if she had realized that the silver car in front of her was an unmarked patrol car, § 87(2)(b) said she had not realized that. Officer Famiano replied, "Well you'd better calm the fuck down." § 87(2)(b) asked for Officer Famiano's name and badge number, but he ignored her and walked away (Allegation B). Then, Officer Famiano walked into a nearby bar on the corner of the intersection. § 87(2)(b) drove away.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

## Summary of Complaint

On October 9, 2007, § 87(2)(b) called the CCRB and filed the above complaint via the agency's Call Processing System (enc. 4a-b). § 87(2)(b) provided the investigator with a written statement via email on October 22, 2007 (enc. 5a-c). On October 25, 2007, § 87(2)(b) was interviewed at her office that is located at § 87(2)(b) (enc. 6a-d). § 87(2)(b) is a § 87(2)(b)-old Asian female, 5'4" tall, weighing 110 pounds, with brown hair and brown eyes.

On October 9, 2007, at approximately 10:20 p.m., § 87(2)(b) was driving from a political event in Chinatown to her home in Flushing, New York. § 87(2)(b)'s daughter, § 87(2)(b), was riding in the front passenger's seat of her car. § 87(2)(b) was driving on Mulberry Street and was stopped at a red light at Hester Street in Manhattan. There was a silver four-door Sedan stopped in front of her at the light, and its license plate was § 87(2)(b). When the stoplight changed to green, the silver car crossed the intersection and § 87(2)(b) followed behind it. Upon crossing the intersection, the silver car stopped abruptly next to a marked patrol car on the right-hand side of the road. The silver car was completely blocking vehicular traffic and § 87(2)(b) could not pass in her car. There was a 20-foot space in front of the marked patrol car and § 87(2)(b) did not understand why the silver vehicle did not pull into that empty parking space. The stoplight at the intersection of Mulberry and Grand Streets had gone through one full cycle of green-yellow-red when § 87(2)(b) quickly honked her car horn, but no one responded. It seemed that the occupants of the silver car were speaking to the occupants of the marked patrol car. A few more minutes went by and then § 87(2)(b) honked her horn a second time because the rear end of her car was sticking out into traffic on Hester Street and she was tired of other drivers honking at her and giving her dirty looks.

Suddenly, PO1 (a Hispanic male, tall, in his thirties, with an earring in one of his ears, very short dark hair, dressed in plainclothes and a gray hooded sweatshirt and jeans—identified by the investigation as Officer James Famiano) exited the rear driver's side of the silver car. Officer Famiano approached the driver's side of § 87(2)(b)'s car, and asked, "You didn't see the undercover car in front of you?" § 87(2)(b) answered calmly, "No, Sir, how do I know you're undercover?" Officer Famiano bent down and pointed his finger at § 87(2)(b)'s face through the open window and said, "Well I suggest you calm the fuck down." § 87(2)(b) was taken aback, so she said, "What did you say, Sir?" Officer Famiano replied, "Ma'am, you should calm the fuck down." § 87(2)(b) was speaking in a calm, respectful manner and she was not raising her voice at the officer. She believed he was telling her to calm down because she had honked her car horn twice in the span of several minutes.

Then, § 87(2)(b) noticed PO2 (Hispanic female with long hair tied back in a ponytail, and dressed in uniform—identified through the investigation as Officer Kenya Bolden) standing at the back driver's side of her car. § 87(2)(b) had not seen Officer Bolden before, but she did not see where she came from. Officer Bolden was motioning with her hands for Officer Famiano to move away from § 87(2)(b)'s car.

She was also pointing to § 87(2)(b)'s license plate that had a very visible sign on it saying § 87(2)(b). While Officer Famiano was turned to face Officer Bolden, with his left side facing § 87(2)(b)'s window, § 87(2)(b) asked him for his name and badge number. Officer Famiano did not respond, but instead he walked across Mulberry Street and into a bar that was on the northwest corner of Mulberry Street and Hester Street. There was a small crowd of people outside the bar, but § 87(2)(b) thought they were too far away to hear what Officer Famiano had said to her. Also, his voice was not raised loudly, so Officer Bolden might not have even heard when Officer Famiano said to § 87(2)(b). After Officer Famiano went inside the bar, Officer Bolden went inside as well. § 87(2)(b) drove down Mulberry Street towards Grand Street and continued on her way home.

There were no other police vehicles present. No other police officers exited the two vehicles apart from Officer Famiano and Officer Bolden. § 87(2)(b) could not provide descriptions of any other officers because she did not see any others outside of the cars. § 87(2)(b) did not know if Officer Bolden was the driver or the passenger of the patrol car.

On February 1, 2008, § 87(2)(b) was interviewed at her office, located at § 87(2)(b) (enc. 7a-o). The investigator showed § 87(2)(b) a photo array containing the photographs of twelve police officers. § 87(2)(b) stated that officer number eight (a filler officer) looked very similar to the officer that cursed at her. She was almost certain that officer was the same officer that she interacted with on the date of incident. She noted that officer number seven (Officer James Famiano) looked similar to the subject officer, but less so than officer number eight.

### **Results of Investigation**

#### **Attempts to Contact Witness**

§ 87(2)(b)'s daughter, § 87(2)(b), moved to China shortly after the incident in question. The investigator emailed § 87(2)(b) twice and called her four times between November 8 and December 22, 2007. § 87(2)(b) emailed the investigator on November 19, 2007, but did not respond to any of her subsequent attempts to obtain a witness statement.

#### **Subject Officer Statement: Officer James Famiano**

On April 3, 2008, Officer Famiano was interviewed at the CCRB (enc. 15a-b). Officer Famiano is a § 87(2)(b)-old white male, 5'10" tall, weighing 190 pounds, with brown hair and green eyes. On October 9, 2007, Officer Famiano worked from 6:00 p.m. until 2:35 a.m. with Officer Wheeler and Sgt. Crimmins. They were assigned to the 5<sup>th</sup> Precinct Anti-Crime team and they were dressed in uniform and assigned to an unmarked car. Officer Famiano thought they were assigned to a black unmarked Crown Victoria, vehicle number 212, but he did not have noted in his memo book which vehicle they were assigned to, nor did he have any memo book entries regarding the incident in question (enc. 14a-b). Officer Wheeler was the operator and Officer Famiano was the recorder. Officer Famiano was seated in the back passenger's seat, directly behind Officer Wheeler who was driving the car.

On October 9, 2007, at approximately 10:20 p.m., Officer Wheeler, Officer Famiano, and Sgt. Crimmins responded to a radio call of a possible crime (10-10) at Mulberry Street and Hester Street in Manhattan. When they arrived, there was already a marked patrol car on scene. Because it was raining heavily outside, Sgt. Crimmins did not want to get out of the car to talk to the officers, so Officer Wheeler pulled up next to the marked patrol car so Sgt. Crimmins and the uniformed officers could discuss what had taken place. Apparently there had been a possible robbery inside the store on the corner of the intersection.

After a few seconds of talking, Officer Wheeler pulled the car over to the left side of the street and parked. Officer Famiano recalled there being lots of cars stopped behind them while Sgt. Crimmins was talking to the other officers, but he did not recall if the car directly behind them was honking its horn. Once Officer Wheeler had parked the car, Officer Famiano got out of the back seat and walked over to the cars whose horns had been honking and said, "Could you give us a minute?" He also held his hands up in front of them as a gesture to reinforce what he had said. Officer Famiano did not approach any one car in particular, nor did he say to any of the motorists, "Calm the fuck down." None of the motorists rolled down their car windows. No motorist asked Officer Famiano for his name or shield number.

Then, Officer Wheeler, Officer Famiano, and Sgt. Crimmins went inside the corner store to investigate the alleged crime. Officer Famiano had no further interaction with any motorists outside the store.

**Witness Officer Statement: Sgt. Brian Crimmins**

On March 7, 2008, Sgt. Crimmins was interviewed at the CCRB (enc. 11a-b). Sgt. Crimmins is a § 87(2)(b)-old white male, 5'10" tall, weighing 165 pounds, with brown hair and blue eyes. On October 9, 2007, Sgt. Crimmins worked from 6:00 p.m. until 2:44 a.m. the following day. He was working with Officer Famiano and Officer Wheeler, but he could not recall which officer was the operator or which officer was seated in the back seat of the silver unmarked vehicle. Sgt. Crimmins was seated in the front passenger's seat. Sgt. Crimmins was the Anti-Crime supervisor and he was dressed in plainclothes. Sgt. Crimmins did not have any relevant memo book entries regarding the incident (enc. 10a-b).

On October 9, 2007, at approximately 10:20 p.m., Sgt. Crimmins, Officer Famiano, and Officer Wheeler responded to a call from the 5<sup>th</sup> Precinct Sector E car for a sergeant to respond to Mulberry Street between Hester and Grand Streets in Manhattan. There had been a robbery inside a restaurant and the sector E officers needed a supervisor to respond to the location. When Sgt. Crimmins arrived, he immediately exited his vehicle and entered the restaurant. Officer Famiano and Officer Wheeler went inside with him. None of the three officers stopped and talked to an Asian woman in a car that had stopped in the middle of the street. Sgt. Crimmins had no recollection of any motorist repeatedly honking her horn at the officers before they exited their vehicle, nor did he recall any female civilians asking for any of the three officers' names or shield numbers. Sgt. Crimmins did not curse at any civilians, and neither did Officer Famiano or Officer Wheeler.

**Witness Officer Statement: Officer James Wheeler**

On March 25, 2008, Officer Wheeler was interviewed at the CCRB (enc. 13a-b). Officer Wheeler is a § 87(2)(b)-old white male, 5'10" tall, weighing 185 pounds, bald, with blue eyes and a goatee. On October 9, 2007, Officer Wheeler worked a tour that began at 6:00 p.m. and ended at 2:35 a.m. the following day. Officer Wheeler worked with Officer Famiano and Sgt. Crimmins as part of the 5<sup>th</sup> Precinct Anti-Crime team. The officers were assigned to a silver unmarked car, vehicle number 195, and they were dressed in plainclothes. Officer Wheeler did not have any memo book entries regarding this incident. He did not recall if he was the operator or the recorder that day and he did not make a notation of that in his memo book (enc. 12a-b).

On October 9, 2007, at approximately 10:20 p.m., the 5<sup>th</sup> Precinct Sector E officers requested that a sergeant respond to Mulberry Street and Hester Street to assist with the investigation of a grand larceny that had occurred inside of a restaurant. Sgt. Crimmins, Officer Wheeler, and Officer Famiano responded to that call. When they arrived on Mulberry Street, Sgt. Crimmins spoke with the Sector E officers. It was raining, so the Anti-Crime officers pulled their car up next to the marked patrol car and Sgt. Crimmins spoke with the other two officers through rolled-down windows. After a minute or so, they pulled the silver unmarked car into a parking spot and all officers exited the two vehicles and went directly inside the restaurant to speak to the complainant. Officer Wheeler did not speak to any motorists and neither did Officer Famiano or Sgt. Crimmins. No motorist honked his or her horn at the officers while the silver unmarked car was stopped in the middle of the street. Neither Officer Wheeler nor Officer Famiano ever spoke with a middle-aged Asian woman in her car, and neither of them told any civilian to "calm the fuck down." No civilian asked for any of the three Anti-Crime officers' badge numbers. After a few minutes, the Anti-Crime officers left the location.

**Witness Officer Statement: Officer Kenya Bolden**

On December 17, 2007, Officer Kenya Bolden was interviewed at the CCRB for an informational interview to assist with identifying the subject officer for mediation (enc. 9a-b). Officer Bolden is a § 87(2)(b)-year-old black female, 5'2" tall, weighing 120 pounds, with dark brown hair and eyes. On October 9, 2007, Officer Bolden worked from 4:00 p.m. until 12:00 a.m. She and her partner, Officer Chin, were assigned to patrol sector E in marked RMP number 4158. They were dressed in uniform. Officer Bolden had the following relevant memo book entries: 21:48, 10-98 and 10-22 at 129 Mulberry Street. 22:30, Final 90Y (enc. 8a-b).

On October 9, 2007, at approximately 9:45 p.m., Officer Bolden and Officer Chin responded to a radio run of a past robbery that had occurred at a bar located at 129 Mulberry Street in Manhattan.

Initially, Officer Bolden and Officer Chin were the only officers present, but during the course of their investigation, their supervisor arrived on scene. Their supervisor—Sgt. Crimmins—arrived in a silver, four-door unmarked vehicle. Officer Bolden did not recall who else was in the vehicle, nor did she recall where Sgt. Crimmins was seated in the car when he arrived. Officer Bolden did not recall the physical descriptions of the other officers that were in Sgt. Crimmins' vehicle. Sgt. Crimmins is a white male, medium build, with blonde hair, and he appears to be in his mid-thirties. He was dressed in plainclothes on the date of the incident. The job ended up being marked 90y—unnecessary.

§ 87(2)(g)

### **Police Department Documents**

SPRINT job number T12657 shows that the 5<sup>th</sup> Precinct Sector E officers responded to a 911 call of a past robbery at 129 Mulberry Street in Manhattan at 8:50 p.m. At 10:12 p.m., a sergeant responded to the location for administrative purposes. The job was completed at 10:29 p.m. (enc. 16a). According to the 5<sup>th</sup> Precinct roll call, the following officers were working during tour 3 on October 9, 2007. Sgt. Crimmins, Officer Wheeler, and Officer Famiano were assigned to Anti-Crime. Officer Bolden and Officer Chin were assigned to Sector E in RMP number 4158 (enc. 17a-b).

### **Other Documents**

According to an online DMV search, the license plate that § 87(2)(b) provided for the silver four-door Sedan came back to a woman who lives in Flushing. The vehicle with that license plate number is a red four-door Volkswagen.

### **Officer/Complainant Histories**

The CCRB has not substantiated any allegations against Officer Famiano during his three years of service to the NYPD (enc. 1a). This is § 87(2)(b)'s first and only CCRB complaint (enc. 2a).

## **Conclusions and Recommendations**

### **Officer Identification**

The investigator attempted to identify the subject officer through a photo array, a DMV search, memo book entries of the three Anti-Crime officers (none of the officers noted in their memo books who was the operator and who was the recorder), and an informational interview of Officer Bolden. § 87(2)(g)

Officer Famiano was eventually identified through his own interview statement wherein he stated that he was seated behind the driver of the silver unmarked car—the same place where § 87(2)(b)'s subject officer was seated. Neither Officer Wheeler nor Sgt. Crimmins recalled which officer was seated in that seat. § 87(2)(g)

### **Disputed and Undisputed Facts**

It is undisputed that 5<sup>th</sup> Precinct Sector E officers and Anti-Crime officers responded to a robbery job at the corner of Mulberry and Hester Streets in Manhattan. § 87(2)(g)

### **Assessment of Evidence**

§ 87(2)(b) said that she and Officer Famiano had a conversation after she honked her horn at the silver unmarked police vehicle in front of her. However, Officer Famiano denied ever having a conversation with § 87(2)(b) or any other motorist. Sgt. Crimmins and Officer Wheeler also denied that Officer Famiano or any other officer conversed with the motorist behind their vehicle.

§ 87(2)(b) stated that Officer Famiano told her to “calm the fuck down” and then ignored her request for his name and shield number. § 87(2)(g)

Furthermore, § 87(2)(b) stated that when Officer Famiano cursed at her, his voice was not raised. She did not think that any civilians or officers that were standing nearby would have heard him. Officer Famiano denied having cursed at any motorist, and he also denied that anyone asked him for his name and shield number. Officer Wheeler and Sgt. Crimmins denied that any officers cursed at any civilians or refused to provide their names or shield numbers to them. § 87(2)(g)

**Allegation A) Discourtesy: Officer James Famiano spoke rudely to § 87(2)(b)**  
**Allegation B) Abuse of Authority: Officer James Famiano refused to provide his name and shield number to § 87(2)(b)**

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: